

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS

UNITED STATES OF AMERICA,

Plaintiff,

v.

RODERICK A. ROBERSON, JR.,

Defendant.

Case No. 3:20-CR-30122-NJR-1

ORDER

ROSENSTENGEL, Chief Judge:

This matter is before the Court on the Motion to Dismiss filed by Defendant Roderick A. Roberson, Jr. (Doc. 50). Roberson raises the Supreme Court's recent decision in *New York State Rifle & Pistol Association, Inc. v. Bruen*, 142 S. Ct. 2111 (2022), and the Third Circuit Court of Appeals' decision in *Range v. Att'y Gen. United States of Am.*, 69 F.4th 96, 98 (3d Cir. 2023), to argue that his charge under 18 U.S.C. § 922(g)(1) should be dismissed.

Roberson was charged by indictment with one count of felon in possession of a firearm in violation of 18 U.S.C. § 922(g)(1) in August 2020 (Doc. 1), pleaded guilty to the charge in July 2021 (Doc. 26), and was sentenced to a term of 70 months' imprisonment in October 2021 (Docs. 39, 42). Thus, Roberson does not have a pending § 922(g)(1) charge. The relief Roberson seeks is only available through a motion to vacate, set aside, or correct a sentence under 28 U.S.C. § 2255.

The Court cannot construe Roberson's motion as a § 2255 motion without a clear

indication that he intends to invoke the statute. *Castro v. United States*, 540 U.S. 375, 377 (2003) (“[T]he court cannot so recharacterize a *pro se* litigant’s motion as the litigant’s first § 2255 motion *unless* the court informs the litigant of its intent to recharacterize, warns the litigant that the recharacterization will subject subsequent § 2255 motions to the law’s ‘second or successive’ restrictions, and provides the litigant with an opportunity to withdraw, or to amend, the filing.”).

Accordingly, the Court **WARNS** Roberson that if he does not file a motion to withdraw his pending Motion to Dismiss on or before **December 22, 2023**, the Court will construe it as a motion filed pursuant to § 2255 and direct the Clerk’s Office to open a new civil case. Roberson will then be subject to the second or successive filing restrictions contained in 28 U.S.C. § 2255(h).

IT IS SO ORDERED.

DATED: November 22, 2023

The image shows a handwritten signature in black ink that reads "Nancy J. Rosenstengel". The signature is written in a cursive style. Behind the signature is a faint circular seal of the United States District Court for the District of New Jersey.

NANCY J. ROSENSTENGEL
Chief U.S. District Judge